

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING RESIDENTIAL CONSTRUCTION DISPUTE LAW; EXPANDING THE DEFINITION OF "CONSTRUCTION DEFECT" TO INCLUDE THE FAILURE TO PERFORM SOIL TESTING AND SITE EVALUATION FOR ADVERSE GEOLOGIC CONDITIONS AND THE FAILURE TO ELIMINATE OR CURE ADVERSE GEOLOGIC CONDITIONS BY APPROVED CONSTRUCTION TECHNIQUES; PROVIDING THAT SUBDIVISION REGULATIONS REQUIRE SOIL TESTING AND SITE EVALUATION FOR ADVERSE GEOLOGIC CONDITIONS AND THAT THE REGULATIONS PROHIBIT THE APPROVAL OF SUBDIVISIONS UNLESS THE ADVERSE GEOLOGIC CONDITIONS CAN BE ELIMINATED OR OVERCOME BY APPROVED CONSTRUCTION TECHNIQUES; AMENDING SECTIONS 70-19-426, 76-3-504, AND 76-3-511, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 70-19-426, MCA, is amended to read:

**"70-19-426. Residential construction disputes -- definitions.** As used in 70-19-427, 70-19-428, and this section, the following definitions apply:

(1) (a) "Action" means any civil lawsuit or action in contract or tort for damage or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction or remodeling of a residence.

(b) The term does not include a civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means a unit owners' organization or a nonprofit corporation created to own and operate portions of a planned community that has the power to require unit owners to pay the costs and expenses incurred in the performance of the association's obligations.

(3) "Claimant" means a home owner or association that asserts a claim against a construction professional concerning a defect in the construction or remodeling of a residence.

(4) "Construction defect" means a deficiency in or arising out of the supervision, construction, or

remodeling of a residence that results from any of the following:

(a) defective materials, products, or components used in the construction or remodeling of a residence;

(b) violation of the applicable building, plumbing, or electrical codes in effect at the time of the construction or remodeling of a residence;

(c) failure to construct or remodel a residence in accordance with contract specifications or accepted trade standards;

(d) (i) failure to perform soil testing and site evaluation in order to obtain a complete description of all geologic elements, including but not limited to areas of existing or potential landslide, slump, mudflow, creep, faulting, erosion, raveling, fractured bedrock, unsupported bedding planes, soil settlement, liquefaction, and other adverse geologic conditions; and

(ii) if the soil testing and site evaluation provided for in this subsection (4)(d) indicate the existence of an adverse geologic condition, the failure to eliminate or overcome the adverse geologic condition by approved construction techniques.

(5) "Construction professional" means a builder, builder vendor, contractor, or subcontractor performing or furnishing the supervision of the construction or remodeling of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(6) (a) "Home owner" means:

(i) any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the remodeling, construction, or construction and sale of a residence; or

(ii) an association as defined in this section.

(b) The term home owner includes but is not limited to a subsequent purchaser of a residence from any home owner.

(7) "Residence" means a single-family house or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system.

(8) "Serve" or "service" means personal service or delivery by certified mail to the last-known address of the addressee."

**Section 2.** Section 76-3-504, MCA, is amended to read:

**"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this chapter must, at a minimum:

1 (a) list the materials that must be included in a subdivision application in order for the application to be  
2 determined to contain the required elements for the purposes of the review required in 76-3-604(1);

3 (b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the  
4 governing body an environmental assessment as prescribed in 76-3-603;

5 (c) establish procedures consistent with this chapter for the submission and review of subdivision  
6 applications and amended applications;

7 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

8 (e) (i) provide for the identification of areas that, because of natural or human-caused hazards, are  
9 unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be  
10 eliminated or overcome by approved construction techniques; and

11 (ii) require soil testing and site evaluation in order to obtain a complete description of all geologic  
12 elements, including but not limited to areas of existing or potential landslide, slump, mudflow, creep, faulting,  
13 erosion, raveling, fractured bedrock, unsupported bedding planes, soil settlement, liquefaction, and other adverse  
14 geologic conditions and prohibit subdivisions in these areas unless the adverse geologic conditions can be  
15 eliminated or overcome by approved construction techniques;

16 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year  
17 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

18 (g) prescribe standards for:

19 (i) the design and arrangement of lots, streets, and roads;

20 (ii) grading and drainage;

21 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet  
22 the:

23 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that  
24 will create one or more parcels containing less than 20 acres; and

25 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels  
26 containing 20 acres or more and less than 160 acres; and

27 (iv) the location and installation of public utilities;

28 (h) provide procedures for the administration of the park and open-space requirements of this chapter;

29 (i) provide for the review of subdivision applications by affected public utilities and those agencies of  
30 local, state, and federal government identified during the preapplication consultation conducted pursuant to

subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(I) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) allows a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision

1 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during  
2 the review of the application, the agent or agency designated by the governing body contacts a public utility,  
3 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or  
4 agency shall notify the subdivider of the contact and the timeframe for response.

5 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent  
6 or agency receives a written request for a preapplication meeting from the subdivider; and

7 (v) establishes a time limit after a preapplication meeting by which an application must be submitted as  
8 provided in 76-3-604.

9 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under  
10 76-3-509 and this section may include provisions that are consistent with this section that promote cluster  
11 development.

12 (3) The governing body may establish deadlines for submittal of subdivision applications."  
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14 **Section 3.** Section 76-3-511, MCA, is amended to read:

15 **"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except as  
16 provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a  
17 regulation under 76-3-501 or ~~76-3-504(1)(f)(iii)~~ 76-3-504(1)(g)(iii) that is more stringent than the comparable state  
18 regulations or guidelines that address the same circumstances. The governing body may incorporate by reference  
19 comparable state regulations or guidelines.

20 (2) The governing body may adopt a regulation to implement 76-3-501 or ~~76-3-504(1)(f)(iii)~~  
21 76-3-504(1)(g)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body  
22 makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

23 (a) the proposed local standard or requirement protects public health or the environment; and

24 (b) the local standard or requirement to be imposed can mitigate harm to the public health or  
25 environment and is achievable under current technology.

26 (3) The written finding must reference information and peer-reviewed scientific studies contained in the  
27 record that forms the basis for the governing body's conclusion. The written finding must also include information  
28 from the hearing record regarding the costs to the regulated community that are directly attributable to the  
29 proposed local standard or requirement.

30 (4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before

1 April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may  
2 petition the governing body to review the regulation. If the governing body determines that the regulation is more  
3 stringent than comparable state regulations or guidelines, the governing body shall comply with this section by  
4 either revising the regulation to conform to the state regulations or guidelines or by making the written finding,  
5 as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the  
6 petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged  
7 regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

8 (b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the  
9 governing body adopts a regulation after January 1, 1990, in an area in which ~~no~~ state regulations or guidelines  
10 did not exist ~~existed~~ and the state government subsequently establishes comparable regulations or guidelines  
11 that are less stringent than the previously adopted governing body regulation."  
12

13 NEW SECTION. Section 4. Applicability. [This act] applies to residential construction commenced on  
14 or after January 1, 2008, and to subdivision proposals submitted for approval to a governmental agency as  
15 provided for in Title 76, chapter 3, part 5, on or after January 1, 2008.

16 - END -